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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL.,
Petitioners

v.

AL FRIEDMAN, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, entered in the above-entitled case on February 17, 1955.

OPINIONS BELOW

The oral opinion of the District Court (R. 44) is unreported and is printed in Appendix B hereto, *infra*, p. 6a. The order of the District Court (R. 45) is unreported and is printed in Appendix B hereto, *infra*, p. 6a. The opinion

of the Court of Appeals (R. 48-52) is unreported and is printed in Appendix B hereto, *infra*, pp. 7a-10a.

JURISDICTION

The Judgment of the Court of Appeals was entered on February 17, 1955, (R. 53); Appendix B, *infra*, p. 11a. Rehearing was denied on March 11, 1955. (R. 57). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1).

QUESTION PRESENTED

In a suit in a Federal District Court by an expelled member of a labor union to restore union membership, where the requisite jurisdictional amount is dependent upon an anticipated loss of employment, is the jurisdictional requirement satisfied by a finding that there is a "present probability" of loss of employment where the anticipated discharge from employment is contingent upon a series of speculative events and completely uncertain of occurrence, where it is conceded that no threat of discharge has been made, and where if such discharge did in fact occur it would constitute an unfair labor practice under the Labor Management Relations Act requiring the employee's reinstatement?

STATUTES INVOLVED

The statutory provisions involved are sections 1331 and 1332 of the Judicial Code, 62 Stat. 930, 28 U.S.C., section 1331 and 1332; Title 28, section 41 of the District of Columbia Code (1940 edition); sections 11-305; 11-306; and 11-755 (a) of the District of Columbia Code (1951 edition); and sections 8 (a) (3), 8 (b) (2), 10 (a), 10 (c) and 10 (e) of the Labor Management Relations Act of 1947, 61 Stat. 140, as amended, 65 Stat. 601, 29 U.S.C.A. 158 (a) (3), 158 (b) (2), 160 (a), 160 (c) and 160 (e). These provisions are printed in Appendix A, *infra*, pp. 1a-5a.

STATEMENT

The respondent was found guilty on September 16, 1952, by a vote of the Convention of the petitioner International Association of Machinists (International Association) of membership in the Communist Party and advocacy, encouragement and support of Communism in violation of the laws of the Association and was expelled from membership therein. (R. 4, 15, 20)[1] Thereafter, the respondent on October 7, 1952, brought suit in the Federal District Court for the District of Columbia against the International Association and the individual petitioners seeking reinstatement of his membership in the union. (R. 1-6).[2] The complaint alleged that respondent's membership in the International Association was a property right exceeding the sum of $3,000.00 in value. (R. 5).

The petitioners moved the District Court to dismiss the action on the ground that the Court lacked jurisdiction over the subject matter because the complaint failed to allege facts sufficient to establish that the matter in controversy exceeded the sum or value of $3,000.00, and that, in fact, the amount involved did not reach this sum. (R. 7). The motion was supported by affidavit. (R. 8-10). The Court after a hearing on the motion held that whether the respondent proceeded under the general Federal

[1] This action of the Convention was the culmination of a full hearing within the International Association beginning with a trial before respondent's local Lodge 688. This trial resulted in a not guilty verdict for respondent which was sustained by the vote of the local Lodge. (R. 3, 14, 19). Upon appeal the president of the International Association found respondent guilty upon the record. (R. 3, 14, 19). Respondent appealed this decision to the Executive Council of the International Association which sustained the verdict. (R. 3, 14, 15, 19, 20). An appeal to the Convention followed.

[2] Respondent filed a prior suit asking such relief from the District Court on July 31, 1952, following the action of the Executive Council of the International Association. This suit was dismissed because respondent had not exhausted his remedies within the organization. *Friedman* v. *International Association of Machinsts, et al.* (Civil Action No. 3367-52, U.S.D.C. D.C.).

statute (28 U.S.C.A. 1332 (a) (1) (b)) or invoked the jurisdiction of the District Court in its local character (Title II, Sec. 306 of the District of Columbia Code, 1951 edition), the burden of showing that the matter in controversy was in excess of the sum or value of $3,000.00 applied in either case and must be resolved by the taking of testimony. (R. 11, 12). The Court also directed the respondent to make his election of the statute under which he desired to proceed. (R. 12).

An amended complaint in two counts was filed on April 23, 1954, each of which set forth the same allegations of fact and requested the same relief. The first invoked the jurisdiction of the Court under the local statute (R. 13) and the second invoked the general Federal jurisdiction of the District Court. (R. 18). Count I alleged that respondent's membership in the International Association is a valuable property right. (R. 16). Count II alleged that such membership is a valuable property right which exceeds the sum of $3,000.00 in value. (R. 21). Thereafter, respondent elected to proceed under the local jurisdiction of the District Court as provided in Title II, Section 306 of the District of Columbia Code (1951 edition). (R. 23).

Testimony was then taken at the direction of the District Court on the issue of the jurisdictional amount. (R. 24-44). The record of this testimony showed that respondent's principal assertion of injury growing out of his expulsion from the International Association was his claim of possible discharge from employment by his employer, the Anheuser-Busch Company, because of a union shop agreement between the International Association and the employer under which employees of the company who are not members of the International Association must, with certain limitations, join the union. (R. 16, 17, 22, 25, 26, 29, 36). It was asserted that such discharge would result in loss of earnings and other benefits connected with the

employment. (R. 25, 26).[3] However, respondent conceded that he knew of no attempt to have him discharged from his employment at Anheuser-Busch. (R. 35-40). Upon such a showing, the District Court dismissed the complaint for lack of jurisdiction. (R. 44, 45, Appendix B, p. 6a). The Court pointed out that this did not mean that respondent was cut off from any relief. He had simply chosen the wrong forum. (R. 44, Appendix B, p. 6a). Upon appeal the Court of Appeals reversed the decision of the District Court and remanded the case for trial on such justiciable questions between the parties as are raised by the pleadings. (R. 48-52). The Court concluded that damages in excess of $3,000.00 would be reasonably certain to result from respondent's expulsion from union membership in the form of loss of employment. (R. 51, 52). The Court recognized that it is an unfair labor practice under the Labor Management Relations Act of 1947 for an employer to discharge or for a union to seek the discharge from employment of an employee for non-membership in the union for reasons other than failure to tender dues and initiation fees. (R. 51). In spite of this recognition, the Court of Appeals concluded that the probabilities of retention of his job are against respondent unless he keeps his union membership "for the courts might not compel reinstatement of an employee discharged after expulsion from a union for conduct such as is attributed to

[3] The respondent also claimed the loss of union death benefits as a result of his expulsion from union membership. (R. 16, 21, 31). However, the record shows the value of these benefits to respondent to be only $125.00. (R. 9). Respondent further claimed the loss of strike benefits if his expulsion stood. (R. 17, 22, 31). The record shows that receipt of strike benefits from the International Association is not a matter of right of any member but is within the discretion and determination of the International President and Executive Council, is dependent upon the availability of funds for such purposes, is subject to further contingencies and conditions set forth in the Association's Constitution, and in no event can be paid unless a strike goes over two weeks. (R. 9). Such a claim is obviously too contingent to be included in determining the value of the right in controversy.

appellant." (R. 51). In support of this conclusion the Court cited *National Labor Relations Board* v. *Kingston Cake Co.*, 206 F. 2d 604 (C.A. 3, 1953). (R. 51). The Court also thought that job insecurity would attach to the likelihood of respondent's presence in his place of employment becoming a source of friction. (R. 51).

On March 11, 1955, the Court of Appeals denied petitioners' timely filed petition for rehearing. (R. 57).

REASONS FOR GRANTING WRIT

1. The present petition raises a jurisdictional issue in a new form that is important in its potential impact upon the administration of the Federal court system.

One of the essential elements of jurisdiction of the Federal courts over a given case is the value of the subject matter in litigation. The limitations which have been placed by Congress on this aspect of Federal jurisdiction are obviously of the greatest importance in keeping within bounds the case load of the Federal court system since otherwise their jurisdiction would be almost as wide as the field of Federal law itself. The importance attached by Congress to these limitations is shown by the fact that they were included in the first Judiciary Act of 1789,[4] and the prerequisite amounts have twice been increased.[5] It is in recognition of this fact that this Court has laid down the rule that the statutory jurisdictional requirements as to the amount in controversy should be strictly construed against assumption of jurisdiction by the Federal courts. *McNutt* v. *General Motors Acceptance Corp.*, 298 U.S. 178 (1936); *Healy* v. *Ratta*, 292 U.S. 263 (1934). The importance of the limitation is further demonstrated by the universally recognized rule that there is a duty upon a Federal court to be watchful of the question of jurisdictional amount, and to ascertain by any lawful method,

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[4] 1 Stat. 78, section 11.

[5] 24 Stat. 552, section 1; 25 Stat. 443, section 1; 36 Stat. 1091, section 24.

at any stage of the proceeding, the existence of the requisite amount or value in controversy, whether or not the parties have raised the issue. *KVOS* v. *Associated Press*, 299 U.S. 269 (1936); *North Pacific S. S. Co.* v. *Soley*, 257 U.S. 216 (1921); *Electro Therapy Products Corp.* v. *Strong*, 84 F. 2d 766 (C.A. 9, 1936); 30 ALR 2d 614, 615, Annotation, Jurisdictional Amount.

The present case brings to the fore an entirely new and novel problem in application of this important jurisdictional requirement which should be decided by this Court. Suits for the reinstatement of union members expelled from membership in a labor organization have been frequent in state courts. Only a handful of these suits have ever been brought in Federal courts and the jurisdictional requirements as to the amount in controversy in such cases appear to have been met on the basis solely of a class action. *Local No. 7 B.M.P.I.U.* v. *Bowen*, 278 F. 271 (D.C. Tex., 1922). Cf. *Giordano* v. *Radio Corporation of America*, 183 F. 2d 558 (C.A. 3, 1950). If these suits may be brought in Federal courts upon an individual basis and with the speculative showing of injury here involved, the already overburdened Federal court system will be required to assume the further burden of a whole new field of litigation in which the suits at best skirt the edges of the jurisdictional requirements. The speculative nature of the claims in this type of litigation is clearly demonstrated by the opinion below which, in order to sustain jurisdiction, had to ignore the rule of strict construction and strain to the utmost the "present probability" concept.

Nor is the impact of the decision below upon the Federal court system affected by the fact that the respondent elected to proceed under the local jurisdiction of the District Court (Title II, Sec. 306 of the District of Columbia Code, 1951 ed.), R. 23, rather than the general Federal statute. (28 U.S. C.A. 1332 (a) (1) (b)). Both the District Court (R. 12) and the Court of Appeals (R. 50) held that it made no difference on the jurisdictional issue whether

the suit is under the local or general statute since their requirements as to the amount in controversy are the same. *Klepinger* v. *Rhodes*, 140 F. 2d 697 (C.A.D.C. 1944); *cert. den*, 322 U.S. 734. (R. 49, Appendix B, 8a).

Finally the fact that this petition is presented to review a judgment below which refuses to dismiss a complaint is not determinative of the issue of whether the writ of certiorari should issue. This Court has considered cases in such a posture where there is an important and clear cut issue of law which is fundamental to the further conduct of the case. *United States* v. *General Motors Corporation*, 323 U.S. 373, 377 (1945). Cases which raise jurisdictional issues have been found by the Court to come within this principle. *Land* v. *Dollar*, 330 U.S. 731, 734 (1947); *Larson* v. *Domestic & Foreign Commerce Corporation*, 337 U.S. 682, 685 (1949). In particular this Court has reviewed and decided cases in the same procedural posture as the present case which raised the same issue that the Federal Courts lacked jurisdiction because the statutory requirements as to the amount in controversy had not been met. *Gibbs* v. *Buck*, 307 U.S. 66 (1939); *KVOS Inc.* v. *Associated Press*, 299 U.S. 269 (1936). The present petition meets the tests of the cited cases.

2. The decision of the Court of Appeals is believed to be contrary to and in conflict with the decisions of this court which hold that claims resting upon a speculative anticipation of a future course of action which may never occur, and not upon a present actual factual basis, are too remote to warrant the exercise of the judicial function and are non-justiciable. *International Longshoremen's and Warehousemen's Union* v. *Boyd*, 347 U.S. 222 (1954); *Public Service Commission of Utah* v. *Wycoff*, 344 U.S. 237 (1952); *Eccles* v. *Peoples Bank*, 333 U.S. 426 (1948); *National War Labor Board* v. *Montgomery Ward & Co.*, 144 F. 2d 528 (C.A.D.C. 1944), *cert. den.* 323 U.S. 774 (1944). In the *Eccles* case, this Court expressed its clear view that Federal courts should not indulge in speculative anticipation as follows:

(p. 432)

> "Thus the Bank seeks a declaration of its rights *if* it should lose its independence, or *if* the Board of Governors should reverse its policy and seek to invoke the condition even though the bank remains independent and *if* then the Directors of the Federal Deposit Insurance Corporation should not change their policy not to grant deposit insurance to the Bank as a non-member of the Federal Reserve System. The concurrence of these contingent events, necessary for injury to be realized, is too speculative to warrant anticipatory judicial determinations."

The present case is squarely covered by these holdings. Had the suit been one by respondent for declaratory relief against the Anheuser-Busch Company and petitioners, or for an injunction against the company and petitioners in order to prevent an anticipatory loss of employment because of expulsion from the International Association, there can be no doubt that Federal courts would have promptly dismissed such a suit on the basis of the cited decisions as asking for relief grounded on a purely speculative injury.[6] Yet it was necessary for the Court of Appeals to indulge in identically the same speculation with respect to respondent's future employment in order to find jurisdiction in the District Court to entertain the present suit. The injury necessary to sustain jurisdiction could result only *if* the union sought respondent's discharge in violation of the National Labor Relations Act of 1947, *infra*, p. 13, *if* the employer heeded such a request and did discharge respondent in violation of such act, and *if* upon application to the National Labor Relations Board for reinstatement the requirements of the statute were not complied with by the Board and the Courts. This is just such a series

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[6] *Johnson* v. *Interstate Transit Lines*, 163 F. 2d 125, 128-129 (C.A. 10, 1947); *Taylor* v. *Brotherhood of Ry. & Steamship Clerks, etc.*, 106 F. Supp. 438, 442-444 (D.C.D.C. 1952); *San Francisco Lodge No. 68 of International Association of Machinists* v. *Forrestal*, 58 F. Supp. 466, 468 (N.D. Cal., 1944).

of contingencies as this Court found in the *Eccles* case to be beyond the scope of judicial inquiry.

The "justiciable issue" cases and cases of the present type present merely different aspects of the same jurisdictional problem, i.e., the certainty or lack of certainty of injury. There should be complete harmony of treatment and result in both situations. Otherwise, the respondent is able to slip in the back door of the District Court when he could not enter the front.

Moreover, the decision below is clearly contrary to the rule laid down by this Court in *Healy* v. *Ratta*, 292 U.S. 263 (1934), requiring that the statutory jurisdictional requirements as to the amount in controversy should be strictly construed against assumption of jurisdiction by Federal courts. The rationale of this requirement was stated by Justice Stone as follows: (p. 270)

> "Pursuant to this policy the jurisdiction of the Federal courts of first instance has been narrowed by successive acts of Congress, which have progressively increased the jurisdictional amount. The policy of the statute calls for its strict construction . . . Due regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which the statute defined * * *."

In this case the Court of Appeals obviously went to the other extreme and resolved every future contingency and doubt in favor of jurisdiction. The necessity for the violation of this Court's declared rule did not exist as the District Court, in dismissing the complaint, pointed out that this did not mean that the respondent was cut off from any judicial relief. (R. 44).

3. The decision of the Court below is also believed to be in conflict with the decision of the Third Circuit in *Giordano* v. *Radio Corporation of America*, 183 F. 2d 558 (C.A. 3, 1950), involving the same issue. In that case the plaintiff alleged that he was about to be expelled from the

union of which he was a member and his name withdrawn from the membership list. The District Court there involved found that the amount in controversy exceeded $3,000.00 on the basis that plaintiff was suing as a representative of a class of 15 other individuals who likewise were about to be expelled from the union. The Third Circuit found that there was no proper class suit and that the jurisdictional issue must be considered solely on the basis of an action to vindicate plaintiff's individual right. On such basis the Court found that the requisite jurisdictional amount was not present. On this point the Court declared: (p. 561)

> "The district judge in his oral opinion denying the defendant's motion to dismiss the complaint did say that if no proper class action was alleged he was of the opinion that 'the rights and liabilities of Giordano alone exceed the sum of $3,000.00.' But he made no formal finding to this effect and *we think that if he had done so we would have been compelled to set it aside as clearly erroneous.* For there is no basis in the evidence for concluding that the plaintiff will suffer pecuniary loss of as much as $3,000.00 as a result of his expulsion from Local 103. Although if expelled he will lose his top seniority with the defendant corporation it is not suggested by the evidence that his normal seniority will not be sufficient to enable him to retain his job in the future. Nor does it appear that he is receiving income from the Local which he will lose by his expulsion or that his interest as a member in the assets of the Local exceed $3,000.00."
>
> "The question of the existence of the jurisdictional amount was squarely raised by the motion to dismiss and the court, after considering the evidence presented to it, made a finding of fact on the point. That finding is asserted by the defendants to be erroneous. If construed as applicable to the plaintiff's individual claim we must hold that it is clearly so. For, as we have seen, the evidence wholly fails to establish the fact that the plaintiff is likely to suffer pecuniary loss in the sum of $3,000.00 as the result of his expulsion from the Local. The district court should,

therefore, have dismissed the complaint for want of jurisdictional amount in controversy. Accordingly upon remand that action will be directed. Since the interlocutory injunction must fall with the dismissal of the complaint it is not necessary for us to consider the defendant's contentions that it was erroneously granted."

"The order granting a preliminary injunction will be vacated and the cause will be remanded with directions to dismiss the complaint." (Emphasis supplied)

In the judgment below in this case the Court of Appeals held that there was a "present probability" of the respondent losing his job as a result of his expulsion from the petitioning International Association so that the amount in controversy would exceed $3,000.00. The Third Circuit on the other hand held in the *Giordano* case that a finding of a probable pecuniary loss in excess of $3,000.00 from loss of union membership would be "clearly erroneous." This Court should clarify the jurisdictional status of suits in Federal courts based on loss of union membership, particularly in the light of their relationship to the Labor Management Relations Act of 1947, *infra*, p. 13.

4. The decision of the Court of Appeals is erroneous and the decision of the District Court clearly correct.

It is generally recognized that the test of the jurisdictional amount in injunction cases is the value to the plaintiff of the right sought to be protected. *Seslar* v. *Union Local 901 Inc.*, 186 F. 2d 403 (C.A. 7, 1951), *cert. den.* 341 U.S. 940; *Dermody* v. *Smith*, 88 F. Supp. 620 (1949); *Dewar* v. *Brooks*, 16 F. Supp. 636 (1936). The alleged right which the respondent seeks to protect in this case is his union membership. The measure of value for that right put forward by the respondent is his earning capacity in his job since he asserts that without union membership he will lose his job and his earning capacity be greatly reduced. (R. 16, 17, 22, 26, 29, 36). But it is not

enough to merely assert the possibility of such a loss. There must at the very least be a reasonable certainty that the loss will occur. *Food Fair Stores Inc.* v. *Food Fair Inc.*, 177 F. 2d 177 (C.A. 1, 1949). *Vicksburg, S. & P. R. R. Co.* v. *Nattin*, 58 F. 2d 979 (C.A. 5, 1932). We believe that such a reasonable certainty cannot legally exist in the type of situation presented by this case.

The record shows that no attempt has been made by the union or by respondent's employer to discharge him because of his expulsion from membership in the union.[7] (R. 36). In addition, it is clear that any effort to do so would be unlawful under the Labor Management Relations Act of 1947 and that an adequate remedy exists within the National Labor Relations Board to enforce this requirement.

The Labor Management Relations Act of 1947 was designed, among other things to protect the rights of individual employees in their relations with labor organization. To this end the statute (29 U.S.C.A. 158 (a) (3)) made it an unfair labor practice for the employer to discharge an employee for non-membership in a union if he has reasonable grounds to believe, *inter alia*, that such membership was terminated for reasons other than the failure of the employee to tender the periodic dues required as a condition of retaining membership. (Appendix A, p. 3a). Likewise, the statute (29 U.S.C.A. 158 (b) (2)) makes it an unfair labor practice for a union to cause or attempt to cause an employer to discharge an employee in violation of subsection (a) (3) of section 158 for non-union membership where termination of that membership has been due to reasons other than failure to tender dues. In *Radio Officers' Union of the Commercial Telegraphers Union* v. *National Labor Relations Board*, 347 U.S. 17 (1954), this Court defined the scope and intent

[7] Indeed, there are no indications that up to the time of the filing of the present petition, nearly two years after respondent's expulsion from the International Association, anyone has ever suggested his discharge from employment for any reason.

of these statutory restrictions. The pertinent portion of this discussion reads as follows: (p. 40)

> "The policy of the Act is to insulate employees' jobs from their organizational rights. Thus §§ 8 (a) (3) and 8 (b) (2) were designed to allow employees to freely exercise their right to join unions, be good, bad, or indifferent members, or abstain from joining any union without imperiling their livelihood. The only limitations Congress has chosen to impose on this right is specified in the proviso to § 8 (a) (3) which authorizes employers to enter into certain union security contracts, but prohibits discharge under such contracts if membership "was not available to the employee on the same terms and conditions generally applicable to other members" or if "membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership." Lengthy legislative debate preceded the 1947 amendment to the Act which thus limited permissible employer discrimination. This legislative history clearly indicates that Congress intended to prevent utilization of union security agreements for any purpose other than to compel payment of union dues and fees. Thus Congress recognized the validity of unions' concern about "free riders," i.e., employees who receive the benefits of union representation but are unwilling to contribute their share of financial support to such union, and gave unions the power to contract to meet the problem while withholding from unions the power to cause the discharge of employees for any other reason. Thus an employer can discharge an employee for nonmembership in a union if the employer has entered a union security contract valid under the Act with such union, and if the other requirements of the proviso are met. No other discrimination aimed at encouraging employees to join, retain membership, or stay in good standing in a union is condoned."

It is thus crystal clear that respondent's employer could not discharge him because of his expulsion from the Inter-

national Association on the grounds here involved and the union could not cause his discharge without both the employer and the union being in violation of the cited provisions of the Labor Management Relations Act. Such action would lead to reinstatement of the employee with back pay. 29 U.S. C.A. 160 (a) and (c). *Union Starch and Refining Co.* v. *National Labor Relations Board,* 186 F. 2d 1008 (C.A. 7, 1951), *cert. den.* 342 U.S. 815.

The Court below recognized these requirements but nevertheless found a reasonable certainty of job loss because a Court of Appeals "might not" enforce a National Labor Relations Board order for reinstatement if there were a discharge in this case based on loss of union membership. (R. 51). We respectfully submit that, even if it could be assumed *arguendo* that a Court of Appeals might ignore its clear duty in such a case, this contingency does not, as a matter of law, establish the reasonable certainty necessary to find the required jurisdictional amount. A "might" is clearly no more than a "possibility" of future harm, which places the situation across the line and into the area of contingent or speculative future claims which have consistently been held insufficient for jurisdictional purposes. *Healy* v. *Ratta,* 292 U.S. 263 (1934); Cases Cited, *supra,* p. 8.

Nor is this simply a matter of semantics, for we believe it to be clear that there can be no more than a speculative possibility that the respondent will lose out in his employment as a result of his expulsion. As pointed out, *supra,* p. 9, it can occur only upon the happening of a whole series of contingencies. The speculative nature of the anticipated loss is underscored by the precedent on which the court below relied in order to reach its result, *National Labor Relations Board* v. *Kingston Cake Co.,* 206 F. 2d 604 (C.A. 3, 1953). (R. 51). This case in no way supports the proposition that in a situation like the present one a Court of Appeals "might not" order reinstatement of a wrongfully discharged employee. The employee in that

case was discharged at the behest of the union because he had tried to aid a rival organization to which he formerly belonged by not signing a non-Communist affidavit in order to keep the first union off an election ballot. The National Labor Relations Board ordered his reinstatement. The Third Circuit refused to enforce the order on the ground that to do so would defeat the basic policy of the statute to provide for collective bargaining through freely chosen representatives. It was a *sui generis* situation which bears no relationship to the present case. We can perceive no relevancy whatsoever of the *Kingston* case in determining the present probability of injury to respondent arising from his expulsion from the International Association.

The opinion below relies upon even more speculative possibilities when it concludes that job insecurity would attach to the likelihood of respondent's presence in his place of employment becoming a source of friction. (R. 51). This speculation clearly does not approach the degree of certainty required by precedent to give it the dignity of a valid consideration in establishing Federal jurisdiction. One can just as easily speculate that reinstatement of respondent in the International Association by Court order would be resented by his fellow employees and more likely lead to friction and job insecurity. The point is that so important a matter as Federal jurisdiction should not turn on what is essentially nothing more than a guess. The vice of this type of speculation in determining whether jurisdictional requirements are met was clearly spelled out by the Fifth Circuit in *Vicksburg, S. & P. R. Co.* v. *Nattin*, 58 F. 2d 979 (C.A. 5, 1932), as follows: (p. 980)

> "To meet the jurisdictional requirement of amount, the bill alleged that, in order to pay the interest and retire the bonds, plaintiff would be each year assessed such an amount as that it would in the aggregate, through the twenty-five years, be compelled to pay on account of the bonds a sum in excess of $5,000. The District Judge, conceiving that the amount in con-

troversy was only $406.80, dismissed the suit for want of jurisdiction.

"The District Judge was right.

* * * * *

"Only prophetic ken of a rare order could forecast what will ensue. Jurisdiction is based on actuality, not prophecy, the pressure of a grievance immediately felt and presently measurable in money of the jurisdictional amount. Speculative anticipation that conditions, from which present ills, not now sufficient in amount to give jurisdiction, flow, may in time aggregate the necessary amount, will not support jurisdiction."

The *Vicksburg* case represents the application to the jurisdictional problem arising out of statutory requirements as to the amount in controversy of those decisions of this Court which preclude jurisdiction based on anticipatory injuries as not giving rise to "justiciable issues." *International Longshoremen's and Warehousemen's Union* v. *Boyd*, 347 U.S. 222 (1954); *Public Service Commission of Utah* v. *Wycoff Co.*, 344 U.S. 237 (1952); *Eccles* v. *Peoples Bank*, 333 U.S. 426 (1948). Both problems are simply different sides of the same coin.

Here too only a "prophetic ken of a rare order" can forecast what will happen to respondent as a result of his expulsion from the International Association. If he fears the future then other proper forums are available to test the validity of the expulsion. No basis exists to burden the Federal courts with this kind of speculative grievance.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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May 20, 1955

APPENDIX

APPENDIX A

STATUTES INVOLVED

Judicial Code

28 U.S.C.A. 1331

§ 1331. *Federal question; amount in controversy*

The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States. June 25, 1948, c. 646, 62 Stat. 930.

28 U.S.D.C. 1332

§ 1332. *Diversity of citizenship; amount in controversy*

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $3,000 exclusive of interest and costs, and is between:

(1) Citizens of different States:[1]

(2) Citizens of a State, and foreign states or citizens or subjects thereof;

(3) Citizens of different States and in which foreign states or citizens or subjects thereof are additional parties.

(b) The word "States", as used in this section, includes the Territories and the District of Columbia. June 25, 1948, c. 646, 62 Stat. 930.

District of Columbia Code

Section 11-305 (1951 edition)

The United States District Court for the District of Columbia, in addition to its jurisdiction as a United States District court, shall continue to have and exercise all the jurisdiction possessed and exercised by it on August 31, 1948 (March 3, 1901, 31 Stat. 1199, ch. 854, section 61; March 3, 1911, 36 Stat. 1167, ch. 231, section 289; June 25,

[1] So in original.

1948, 62 Stat. 992, ch. 646, section 39; May 24, 1949, 63 Stat. 108, ch. 139, section 135.)

* * * * *

Title 28, Section 41 (1946 edition)

The district courts shall have original jurisdiction as follows:

(1) United States as plaintiff; civil suits or common law or in equity:

FIRST. Of all suits of a civil nature, or common law or in equity, * * * where the matter in controversy exceeds $3,000, and (a) arises under the Constitution or laws of the United States, on treaties made, or which shall be made, under their authority, or (b) Is between citizens of different States * * * (March 3, 1911, ch. 231, section 24, par. 1, 36 Stat. 1091; May 14, 1934, ch. 283, section 1, 48 Stat. 775; August 21, 1937, ch. 726, section 1, 50 Stat. 738; April 20, 1940, ch. 117, 54 Stat. 143).

* * * * *

Section 11-306 (1951 edition)

Said court[1] (except as otherwise provided in this title) shall have cognizance * * * of all cases in law and equity between parties, both or either of which shall be resident or be found within said district * * *. (R.S.D.C. 763; Feb. 27, 1877, 19 Stat. 253, ch. 69, section 2.)

* * * * *

Section 11-755 (a) (1951 edition)

The Municipal Court for the District of Columbia, as established by this subchapter shall consist of a criminal and civil branch. The court and each judge thereof shall have and exercise the same powers and jurisdiction as were heretofore had or exercised by the Police Court of the District of Columbia or by the Municipal Court of the District of Columbia or the judges thereof on the effective date of this subchapter and in addition said court shall have exclusive jurisdiction of civil actions, including counterclaims and crossclaims, in which the claimed value of personal property or the debt or damages claimed,

[1] Reference is to United States District Court.

exclusive of interest, attorneys fees, protest fees, and costs, does not exceed the sum of $3,000 * * *. April 1, 1942, 56 Stat. 192, ch. 207, section 4.)

Labor-Management Relations Act, 1947

29 U.S.C.A. 141 et seq.

§ 158. *Unfair labor practices*

(a) It shall be an unfair labor practice for an employer—

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 159(a) of this title, in the appropriate collective-bargaining unit covered by such agreement when made and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with section 159 (f), (g), (h) of this title, and (ii) unless following an election held as provided in section 159 (e) of this title within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further,* That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the em-

ployee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership; * * * As amended June 23, 1947, 3:17 p.m., E.D.T., c. 120, Title I, § 101, 61 Stat. 140; Oct. 22, 1951, c. 534, § 1 (b), 65 Stat. 601.

* * * * *

§ 160. *Prevention of unfair labor practices — Powers of Board generally*

(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158 of this title) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: * * *

* * * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this subchapter: *Provided*, That when an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: * * *

* * * * *

Petition to court for enforcement of order; proceedings; review of judgment

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the United States courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, * * * Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree and enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * *

APPENDIX B

District Court's Oral Opinion (R. 44)

(Feb. 17, 1954.)

Hon. Edward M. Curran, Judge.

The Court: I find that no competent evidence has been presented to show that if the expulsion order is allowed to stand that the alleged threatened losses to the plaintiff will exceed $3,000.00. The motion to dismiss is granted. That doesn't mean that you are cut off from any relief. There are other courts you can go to or if the time comes that the man is actually fired, you can go to court, too.

• • • • •

District Court's Order (R. 45)

(Filed March 2, 1954)

This cause came on for hearing on defendant's motion to dismiss the action on the ground that the Court lacks jurisdiction because the amount actually in controversy is less than $3,000.00, and this Court's order entered on October 15, 1953, directing that plaintiff support by competent proof his allegations that the amount in controversy exceeds $3,000.00.

Whereupon, after consideration of the pleadings, the memoranda of points and authorities filed by the parties, the arguments of counsel, and after hearing being accorded plaintiff for the purpose of offering testimony relating to the jurisdictional amount, this Court being of the opinion that no competent evidence has been presented to show that if the expulsion of plaintiff from defendant union is allowed to stand the alleged threatened losses to the plaintiff will exceed $3,000.00.

Now, therefore, it is hereby ordered that defendant's motion to dismiss be, and it hereby is, granted, the action is dismissed for lack of jurisdiction, and the temporary injunction heretofore entered is vacated.

/s/ Edward M. Curran,
United States District Judge.

Dated: March 2, 1954.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12238

AL FRIEDMAN, APPELLANT

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL., APPELLEES

Appeal from the United States District Court for the District of Columbia

---

Decided February 17, 1955

Mr. Victor B. Harris, of the bar of the Supreme Court of Missouri, *pro hac vice*, by special leave of Court, with whom *Mr. Seymour Krieger* was on the brief, for appellant.

Mr. Edward J. Hickey, Jr., with whom *Messrs. Clarence M. Mulholland* and *William G. Mahoney* were on the brief, for appellees.

Before FAHY, WASHINGTON and DANAHER, Circuit Judges.

FAHY, *Circuit Judge:* The question is whether the District Court erred in determining that the value of the matter in controversy was not shown by competent evidence to exceed $3,000.00, resulting in dismissal of the complaint for lack of jurisdiction.

Appellant, plaintiff below, filed his complaint to enjoin appellees from carrying out an order expelling him from the International Association of Machinists and to require his reinstatement as a member in good standing of this Union. He alleges that the Executive Council of the Union sustained his expulsion, whereupon he appealed to its Grand Lodge Convention which adopted a report that at all times material he was a member of the

Communist Party, advocated, encouraged and gave support to Communism, and so merited expulsion. The complaint points out that a trial committee of Lodge No. 688 to which appellant belonged[1] had reached a different conclusion, finding him not guilty of such charges. The complaint then characterizes the procedures eventuating in the expulsion order as illegal because not supported by substantial evidence and in certain respects violative of the constitution of the Union.

If the matter in controversy exceeds the value of $3,000.00, exclusive of interest and costs, the jurisdictional requirements of §§ 1331 and 1332 of the Judicial Code, 28 U.S.C. §§ 1331, 1332 (1952), 62 Stat. 930, are satisfied insofar as the amount involved is concerned. Such value also brings a case within the court's jurisdictional reach under the local Code, § 11-306, D.C. Code (1951).[2]

Describing appellant's Union membership as a property right of a value in excess of $3,000.00 the complaint alleges that he is a tool and diemaker in a highly skilled trade almost completely organized and controlled by the Union; that as a member of the Union his family will be entitled upon his death to valuable death benefits; that he is entitled to valuable strike benefits in the event of a strike at his place of work; that he is employed by Anheuser-Busch, Inc., which has a contract with the Union requiring such employees as himself to be members; and that if the expulsion order stands he will lose his job, will be unable to obtain employment in his trade, will lose strike benefits, and his family will lose death benefits.

Appellant's deposition taken on the jurisdictional question, without factual dispute in the record, fixes his wages at Anheuser-Busch as $137.25 per week. He deposed

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[1] The complaint alleges that appellant was a member of Tool and Diemakers Lodge 688 of the International Association of Machinists. The Lodge is located at St. Louis, where he resides.

[2] The exclusive jurisdiction carved out for the Municipal Court of the District of Columbia by § 11-755, D.C. Code (1951), does not include civil actions in which the claimed value of personal property, or damages claimed, exceeds the sum stated.

As bearing on the relation of the amount involved to the question of jurisdiction see *Klepinger* v. *Rhodes*, 78 U.S. App. D.C. 340, 140 F. 2d 697, *cert. denied*, 322 U.S. 734; *Miller* v. *Woods*, 87 U.S App. D.C. 324, 185 F. 2d 499; *Rowe* v. *Nolan Finance Co.*, 79 U.S. App. D.C. 35, 142 F. 2d 93.

that should he lose his Union membership he would soon also lose his job and probably would be obliged to work at a wage scale of about $60.00 per week for semi-skilled or unskilled work or accept spasmodic tool-and-die work in small, non-unionized "alley shops" without fringe pay benefits. On the other hand if he can remain in good standing in the Union steady employment at the higher wage appears likely.

The union shop contract between Anheuser-Busch and the Union provides in substance that an employee such as appellant shall remain a member in good standing in the Machinists Union during the term of the agreement.

It is arguable that notwithstanding this contract appellant would not be discharged if expelled from the Union provided he continued to tender dues to it since under Section 8(a)(3) of the Labor Management Relations Act of 1947[3] it is an unfair labor practice to discharge an employee for nonmembership in a union if the employer has reason to believe his membership was terminated for reasons other than failure to tender dues and initiation fees. *Radio Officers* v. *Labor Board*, 347 U.S. 17, 40-2; *National Labor Relations Bd.* v. *Gottfried Baking Co.*, 210 F. 2d 772, 784 (2d Cir.); *National Labor Relations Bd.* v. *Philadelphia Iron Wks.*, 211 F. 2d 937, 940-1 (3d Cir.). But the probabilities of retention in his job are against appellant unless he can clear himself of the Communist charges; for the courts might not compel reinstatement of an employee discharged after expulsion from a union for conduct such as is attributed to appellant. See, for example, *National Labor Relations Board* v. *Kingston Cake Co.*, 206 F. 2d 604 (3d Cir.). And apart from the effect of nonmembership in the Union, job insecurity would attach to the likelihood of his presence in the shop becoming a source of friction. The threats to the earning capacity of a highly skilled workman which inhere in

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[3] 61 Stat. 136, 141, as amended, 29 U.S.C. § 158(a)(3) (1952), which provides as follows: " • • • *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization • • • (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership • • •."

these hypotheses are serious enough to warrant the conclusion that damages would be reasonably certain to result from appellant's expulsion from the Union on charges tying him to Communist activity. The monetary loss from such expulsion is readily translatable into an amount exceeding $3,000.00. Appellant's deposition on the jurisdictional issue places his age at approximately 36 years. His normal life expectancy accordingly is 30 years more or less.[4] Thus there is probably before him a number of working years. Should his wage scale of about $137 a week be halved by his expulsion from the Union, as from his testimony also seems probable, his loss would soon exceed $3,000.00. See *Brotherhood* v. *Pinkston*, 293 U.S. 96. Absolute certainty of this value is not essential. *St. Paul Indemnity Co.* v. *Cab Co.*, 303 U.S. 283, 288-9. Present probability that damages will exceed that sum is enough. *Food Fair Stores* v. *Food Fair*, 177 F. 2d 177, 184 (1st Cir.). See, also, *Nord* v. *Griffin*, 86 F. 2d 481 (7th Cir.), *cert. denied*, 300 U.S. 673.

We are accordingly of the opinion that the facts adduced on the value of the matter in controversy bring the case within the jurisdiction of the District Court, enabling it to decide such justiciable questions between the parties as it may find are raised by the pleadings.[5]

Reversed and remanded.

---

[4] The United States Life Table, 1939-41, based on the 1940 census, lists the life expectancy of a 36 year old male as 32.94 years (U.S. Life Tables and Actuarial Tables 1939-41, Thomas N.E. Greville (Govt. Print. Office 1946)); the American Men Ultimate Table of Mortality (1900-1915) lists 32.67 years; the 1941 Commissioners Standard Ordinary Mortality Table (1930-1940) lists 32.59 years as the life expectancy at 36, without regard to sex; the 1937 Standard Annuity (1931-1936) lists 36.49 years life expectancy for 36 year old males. See 4 Richards, Law of Insurance, App. E 1, p. 2016-7 (1952).

[5] Union membership with death and strike benefits has been held to be a valuable property right which equity will protect. *Burke* v. *Monumental Div. No. 52, B. of L. Engineers*, 273 Fed. 707 (D. Md.); *Local Union No. 57, Etc.* v. *Boyd*, 245 Ala. 227, 16 So. 2d 705; *Heasley* v. *Operative P. & C.F.I. Assn.*, 324 Pa. 257, 188 A. 206; *Abdon* v. *Wallace*, 95 Ind. App. 604, 165 N.E. 68; 168 A.L.R. 1479n.

United States Court of Appeals for the District of Columbia Circuit Filed Feb 17 1955 Joseph W. Stewart Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

January Term, 1955.

No. 12,238

AL FRIEDMAN, *Appellant*
v.

INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL., *Appellees.*

Appeal from the United States District Court for the District of Columbia.

Before: Fahy, Washington, and Danaher, Circuit Judges.

Judgment

This cause came on to be heard on the record from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof, It is ordered and adjudged by this Court that the order ..... of the said District Court appealed from in this cause be, and the same is hereby, reversed with costs, and that this cause be, and it is hereby, remanded to the said District Court for further proceedings not inconsistent with the opinion of this Court. Dated: February 17, 1955.

Per Circuit JUDGE FAHY

Acknowledgment of Service of Petition by Counsel for Respondent

Receipt is hereby acknowledged of 3 true copies of the foregoing printed petition for certiorari on this day of May, 1955.

.....

SEYMOUR KRIEGER
777 14th Street, N. W.
Washington 5, D. C.
Counsel for the Respondent

Office - Supreme Court, U. S.
FILED
AUG 19 1955
HAROLD B. WILLEY, Clerk

No. [redacted] 89

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1955.

INTERNATIONAL ASSOCIATION OF MACHINISTS et al.,
Petitioners,

v.

AL FRIEDMAN,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO ISSUANCE OF WRIT OF CERTIORARI.

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August 19, 1955.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 1-4477.

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No. 808.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1955.

INTERNATIONAL ASSOCIATION OF MACHINISTS et al.,
Petitioners,

v.

AL FRIEDMAN,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO ISSUANCE OF WRIT OF CERTIORARI.

QUESTIONS PRESENTED.

The questions are:

(1) Does the District Court of the District of Columbia, sitting as a local court, have jurisdiction to determine whether petitioners illegally expelled respondent from union membership and to order his reinstatement under its general equity jurisdiction; and

(2) Are the jurisdictional requirements of the District of Columbia Code, which require the claimed value of personal property or damages claimed to be in excess of $3,000, satisfied where, although not as yet discharged, respondent's present employment requires union membership and respondent, if discharged, would be unable to

work anywhere in the United States in his highly skilled trade as a non-member of petitioner union and would thereby suffer losses greatly in excess of $3,000?[1]

---

[1] Petitioner's statement of the "Question Presented" (page 2 of the Petition) is inaccurate in the following respects:

(1) This is not "a suit in a Federal District Court," as Petitioners state, which might thereby involve a problem important to all Federal District Courts; but one brought in the District Court of the District of Columbia as a local court (R. 12, 23).

(2) The "requisite jurisdictional amount" is not "dependent upon an anticipated loss of employment"; because the jurisdiction of the District Court as a local court could rest on its general equity powers as a court of general jurisdiction, even though the Court of Appeals found it unnecessary to so hold, since the requirements of the District of Columbia Code (Title 11, Sec. 755) were satisfied by the undisputed evidence.

(3) There was no finding of "'present probability' of loss of employment" by the Court of Appeals on which it rested jurisdiction, as alleged by petitioners. The Court of Appeals used no such language and made no such finding. On the contrary, the Court of Appeals found that respondent had to remain a union member in good standing to keep his valuable job; and that "apart from the effect of non-membership in the Union, job insecurity would attach" unless respondent could clear himself of the Communist charges on which petitioners had expelled him from their Union (Appendix B, p. 9a), illegally as alleged by respondent.

(4) The "anticipated discharge" is not "contingent upon a series of speculative events and completely uncertain of occurrence" as alleged by petitioners. The Opinion of the Court of Appeals shows that it found, on the uncontradicted record, that respondent would lose his valuable job if the expulsion order issued by petitioners stands; and further found that aside from the non-membership in petitioner Union, "job insecurity would attach" to petitioners' action, which respondent asserts was illegal and ought to be set aside.

(5) Finally, petitioners say that "if such discharge did, in fact, occur, it would constitute an unfair labor practice * * * requiring the employee's reinstatement." Such a legal conclusion obviously has no place in a statement of the "Question Presented." Moreover, it is inaccurate, as we shall point out below, page 11. The Court of Appeals also found it inaccurate (Appendix B, p. 9a). Also, as we point out below, pages 11-13, respondent might be discharged simply because petitioners had found him to be a Communist. This could not "constitute an unfair labor practice * * * requiring the employee's reinstatement."

STATEMENT.

Respondent is a resident of St. Louis, Missouri, and has for many years been a member of Lodge 688 of petitioner Union, International Association of Machinists (R. 1-2). Respondent contends that he was illegally expelled from petitioner Union and asks that he be reinstated (R. 6). Petitioners filed a motion to dismiss on the ground that the complaint "fails to allege facts sufficient to establish that the amount in controversy exceeds $3,000.00"; and that therefore the District Court was without jurisdiction over the subject matter (R. 7). The District Court (Hon. Matthew F. McGuire, Judge) required respondent to elect whether he wished to proceed under the local statute, Title 11, Sec. 306 of the District of Columbia Code, 1951 Edition, or whether he wished to invoke the jurisdiction of the District Court as a United States District Court as provided in Title 28, U. S. C. A., Sec. 1332 (R. 11-12). Respondent elected to proceed under Title 11, Sec. 306 of the District of Columbia Code, 1951 Edition (R. 23). The District Court (Hon. Matthew F. McGuire, Judge) then referred the matter to "the Motions Judge for the taking of testimony relating to the jurisdictional amount" (R. 23).

The Motions Judge (Hon. Edward M. Curran), found "that no evidence has been presented to show that if the expulsion of plaintiff from defendant Union is allowed to stand the alleged threatened losses to the plaintiff will exceed $3,000.00," and dismissed the action for lack of jurisdiction (R. 45).

Prior to the filing of petitioners' motion to dismiss, respondent had filed a motion for preliminary injunction which was heard on October 23rd, 1952, and a temporary injunction granted by the District Court (Hon. Luther W.

Youngdahl, Judge) restraining petitioners from enforcing the expulsion order (R. 6-7). The preliminary injunction was vacated by the order of March 2nd, 1954, dismissing respondent's action for lack of jurisdiction (R. 45).

The facts are undisputed.[2] They show that petitioner International Association of Machinists is a labor organization; that petitioner Hayes is International President thereof; that petitioner Peterson is general secretary-treasurer; and that petitioner Walker is a general vice-president (R. 2-8). Petitioners Hayes, Peterson and Walker are members of the Executive Council of the Union and as officers and members of the Executive Council sufficiently represented petitioner Union and the members thereof to bring them before the District Court to answer the charges herein (R. 2). The action is brought against petitioners Hayes, Peterson and Walker in their individual capacities as well as in their capacities as officers of the Machinists' Union and members of its Executive Council (R. 2).

Charges were brought against respondent in his local lodge accusing him of being a Communist (R. 44, 2). Such charges were heard before a trial committee who found respondent "not guilty" (R. 3). The report of the trial committee was submitted to the members of the local lodge, who likewise found respondent not guilty by a vote of 95 to 26 (R. 3). Thereafter, an appeal was taken from the not guilty verdicts and respondent was expelled from the Union by petitioner International Presi-

[2] Since the matter is before this Court on petitioners' motion to dismiss, it is well settled that respondent's unchallenged factual allegations must be taken as true and viewed in the aspect most favorable to respondent and most unfavorable to petitioners. *Postal Telegraph Cable Co. v. Newport*, 247 U. S. 464, 474 (1917); *Donnelly Garment Co. v. International Ladies Garment Workers*, 97 F. (2) 309, 316 (C. A. 8, 1938). In the instant case the Court of Appeals obviously adhered to this rule.

dent, solely on the record and without ever seeing a single witness (R. 3). Respondent appealed this expulsion order to the Executive Council and the Grand Lodge Convention, both of which upheld the expulsion order (R. 3-4).

Respondent contends that the taking of the appeal from the decisions of the local lodge and setting aside the findings of "not guilty" and substituting findings of "guilty", and ordering expulsion, were contrary to the constitution of the Machinists Union and violated fundamental principles of democratic procedure (R. 4).

Respondent further alleged that respondent's membership in petitioner Union is a valuable property right, which property right exceeds the sum of $3,000 in value; that as a tool and die maker respondent belongs to a highly skilled trade which is completely organized and controlled by petitioner Union; that as a member thereof respondent's family is entitled to valuable death benefits and respondent is entitled to valuable strike benefits in the event of a strike (R. 5). Respondent at present is employed as a machinist by Anheuser-Busch, Inc., St. Louis, Missouri, which has a contract with petitioner Union requiring all machinists to be members of that organization, which contract is in full force and effect (R. 5, 29-30). Respondent also alleged that if the expulsion order is allowed to stand he will lose his present job, will be unable to obtain employment in his trade anywhere in the United States, will lose the strike benefits due him and the benefits of the contract between petitioner Union and Anheuser-Busch, his family will lose the right to death benefits; and that respondent has no adequate remedy at law to prevent the carrying out of the order of expulsion (R. 5).

Respondent's deposition was introduced in evidence and disclosed that respondent earns $137.25 per week at Anheu-

ser-Busch, Inc., and that as an employee of that organization is a beneficiary of a $3,500 life insurance policy, is entitled to benefits whether the accident occurs in or out of the plant, and to hospitalization both for himself and his dependents, sick benefits, vacation pay and eight paid holidays per year (R. 25). Sick benefits are $30 per week (R. 26). It was stipulated between the parties that a contract existed between Anheuser-Busch, Inc., and petitioner Union under the terms of which all machinists must "become members of the union and remain members in good standing in the union during the term of this agreement" (R. 29-30). It was also stipulated that there is a grievance procedure in effect between Anheuser-Busch, Inc., and petitioner Union (R. 30-31).

Respondent testified that tool and die makers in the St. Louis area are 95% organized by petitioner Union and the remaining 5% belong to some other union (R. 32). He further testified, over petitioners' objection, that he would not be able to get a job in any other union plant if he were expelled for the charges listed against him (R. 32-33). Respondent also testified, over petitioners' objection, that he had lived in St. Louis all of his life, that he knew what the average wage was in unskilled and semi-skilled work, and that this was not over $1.50 per hour (R. 34). Respondent is thirty-six years of age (R. 34).

On cross-examination respondent stated that during the period of time when the expulsion order was in effect, prior to the granting of the temporary injunction, he knew of no attempt made to have him discharged from his employment at Anheuser-Busch, Inc. (R. 35-37).

The Court of Appeals found that under the undisputed facts "the monetary loss for such expulsion is readily translatable into an amount exceeding $3,000.00"; that the facts adduced brought the case within the jurisdiction of

the District Court and reversed and remanded (Appendix B, p. 10a).[3]

Respondent had contended in the court below that the District Court had jurisdiction of this action under Title 11, Sec. 755, District of Columbia Code, under its general equity powers, regardless of the amount in controversy. The Court of Appeals, however, did not discuss that question since it found that the amount in controversy, under the facts, exceeded $3,000.

REASONS FOR REFUSING WRIT.

I.

Respondent's Action Was Brought Under the Local Code of the District of Columbia. Hence, Petitioners' Contention That There Is Here Raised a Jurisdictional Issue Important to the Administration of the Entire Federal Court System Is Necessarily Without Merit.

In the District Court respondent was required to elect whether he wished to proceed under the local statute or whether he wished to invoke the jurisdiction of the District Court as a United States District Court (R. 11-12). He elected to proceed under the local code, Title 11, Sec. 306, District of Columbia Code, 1951 Ed. (R. 23).

The Court of Appeals found "that the facts adduced on the matter in controversy bring the case within the juris-

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[3] The "Appendix B" referred to is that in the Petition. Apparently petitioners have filed in this Court a record which is a literal continuation of the "Joint Appendix" in the Court of Appeals; but neglected to provide respondent's counsel with a copy thereof. However, since the page numbers used in the Petition are obviously identical with those in the "Joint Appendix," counsel has had no difficulty conforming the record references in this brief to those in the record before this Court, insofar as the "Joint Appendix" goes. For matters occurring after the preparation of the record in the Court of Appeals, respondent's brief refers to the Appendix to the Petition.

diction of the District Court" (Appendix B, p. 10a). The Court of Appeals also noted that union membership had been "held to be a valuable property right which equity will protect" (Appendix B, p. 10a). It is difficult to see how this finding could have any effect on the "federal court system" as petitioners contend, since all the Court of Appeals had before it was a construction of the District of Columbia Code.

Petitioners appear to recognize the insecurity of their position by stating that it makes no difference that respondent was proceeding under the local code, since the requirements of both the local and general statutes "as to the amount in controversy are the same." However, reference to the statutes shows this to be incorrect. The District of Columbia code removes jurisdiction from the District Court as a local court where "the claimed value of personal property or the debt of damages claimed * * * does not exceed the sum of $3,000" (Title 11, Sec. 755); whereas the jurisdiction of the District Court as a Federal court exists "where the matter in controversy exceeds the sum or value of $3,000" [Title 28, U. S. C. A. 1332 (a)]. Clearly, no question is or could be involved here which affects the "administration of the Federal court system."

II.

Respondent's Damages Are Not Speculative. To Wait Until He Has Been Discharged From His Present Job, Either Because of Non-union Membership or Because His Employer Decided to Fire Him Because Petitioners Expelled Him as a Communist, Would Leave Respondent Without Legal Redress for Petitioners' Unlawful Conduct.

Petitioners are somewhat less than frank with the Court in their repeated assertions that there is no possibility of

respondent losing his present job. We think the Court will take judicial notice of petitioners' own published record of the official position already taken by them as to respondent's future employment status. In the official published report on the "Proceedings, 23rd Grand Lodge Convention, International Association of Machinists, Kansas City, Missouri, September 8-19, 1952," is the following question and answer in relation to the expulsion of respondent, which had just been voted:

> "Delegate Charles Reis (Lodge 1194): In the case of a worker accused of Communism, and he is expelled from the I. A. of M., what happens? Can he keep on working? That is what I want to find out.
>
> "President Hayes: It depends upon whether we have union shop agreement and if the provision of the agreement does not permit him to work, he doesn't keep on working. If he is working under a non-union shop agreement, of course, there is nothing in our law that puts us in a position to have him discharged."

It would seem clear from the above that petitioners do not intend that respondent "keep on working," since a union shop agreement is involved here, as petitioners concede (R. 30-31) and as the Court of Appeals found (Appendix B, p. 8a). Indeed, petitioners' statement overlooks the uncontradicted testimony that respondent's job depends upon his continued membership in petitioner union; and that he knew from his own experience as a union steward that only union members get any protection from the union (R. 36-38).

Furthermore, aside from petitioners' public statements about what will happen to respondent's job, as well as the uncontradicted evidence, we submit that it would be naive to suppose that petitioners would make any effort to protect respondent, should they succeed in getting this action dismissed. They have booted respondent out of

their union. They have said he is a Communist, not fit to live with as a union member. The meaning of Communism today is equivalent to being a traitor to one's country. In their brief filed in the Court of Appeals, petitioners boasted that they were trying to get rid of respondent in the interest of "American security" (p. 3, Appellees' Brief, Court of Appeals).

We submit that the only thing that is keeping respondent working is the pendency of this action. Moreover, during a good part of the time, respondent was protected by a temporary injunction issued in the District Court (R. 6-7). *There is nothing speculative about what will happen to respondent should he be denied relief in the District Court.* He will lose his job and be unable to work at his trade anywhere in the United States, since petitioners have such work almost completely organized and controlled (R. 5).

Petitioners assert (p. 9) that no injury could result to respondent because any request by them for his discharge would be a violation of the National Labor Relations Act. This overlooks several things:

1) the National Labor Relations Act is not self-enforcing;

2) respondent might be fired by his employer solely on the basis of petitioners having expelled him for being a Communist; and

3) Anheuser-Busch might go out of business or respondent might want to work at his trade elsewhere, which he would be unable to do if the expulsion order stands.

The National Labor Relations Act Is Not Self-Enforcing.

The National Labor Relations Board has always taken the view that the exercise of its jurisdiction is a discretionary matter with it, see 28 L. R. R. M. 2112; and has been upheld by this Court, *National Labor Relations Board v. Denver Building Trades*, 341 U. S. 675, 683-685 (1951). Respondent, therefore, has no remedy of right anywhere except in the District Court. Moreover, to expect a governmental agency, such as the National Labor Relations Board, to act to protect the job of a union employee who had been fired because his union found him to be a Communist, is to misunderstand the facts of present-day life.

No Employer Would Risk Public Ill Will by Keeping on Its Payroll an Employee Whose Own Union Had Expelled Him for Being a Communist.

If the expulsion order stands, respondent has no job protection. It is unreasonable to expect an employer, particularly one engaged in a business as sensitive to public pressure as Anheuser-Busch, to keep in its employment one whose own union has in effect determined that he is a traitor to his country. It would do respondent little good to attempt to explain that he was actually acquitted twice by a jury of his peers, the men who knew him and with whom he worked; and that his expulsion evolved only from officials who did not know him, and in fact, have not to this day even seen him.

Discharges have been upheld for conduct much less directly tainted with alleged Communism than the charges against respondent. See *U. E. v. General Electric Co.*, 35 L. R. R. M. 2285, 127 F. Supp. 934 (D. C., D. C. 1954), in which a discharge was upheld for refusal to answer questions by a Congressional Committee. Respondent here

would have no protection against a discharge because he had been found to be a Communist, even should the Union contest it, which, of course, it could not under the instant circumstances, having itself made the finding of Communism. In the *General Electric* case, supra, the District Court held that a discharge for refusing to testify before a Congressional Committee by invoking the Fifth Amendment was one for "obvious cause".

It is interesting to note that the District Court there found as a fact that friction resulted from the stigmatized employee's presence on the job. Said the District Court in part (l. c. 2288-2289):

> "There was testimony that defendant was criticized by its stockholders and customers after its employees had relied upon their Fifth Amendment privilege before Congressional Committees. There was also evidence of unrest among fellow employees, and in one instance of refusal to work on the same job with one of the employees who had refused to testify regarding his Communist affiliations (Defendant's Exhibits 16 and 17). It appears to the Court that the threatened loss of good will, displeasure of stockholders and prospective customers, disruption of plant morale and the grave doubts as to the security of employees and its plants, all resulting from the refusal of its employees to testify before Congressional Committees, justified defendant in immediately discharging such employees for obvious cause."

Clearly, the Court of Appeals was on sound ground when it held in the instant case: "Apart from the effect of non-membership in the Union, job insecurity would attach to the likelihood of his [respondent's] presence in the shop becoming a source of friction. The threats to the earning capacity of a highly skilled workman which inhere in these hypotheses are serious enough to warrant the conclusion

that damages would be reasonably certain to result from appellant's expulsion from the Union on charges tying him to Communist activity."

The Readily Ascertainable Damage to Respondent if the Expulsion Order Stands Is Not Limited to His Continued Employment at Anheuser-Busch.

Under the present state of the record, petitioners cannot dispute that the trade in which respondent is engaged is one requiring great skill and one which is virtually completely organized (R. 5). They cannot dispute that, except as a member of their Union, respondent could not work at his trade (R. 5). Respondent is now making $137.25 per week (R. 25). If he is cut off from his highly skilled occupation, he will be forced to find work in some other job paying not more than $60 per week at the most (R. 34). Thus, respondent would suffer a financial loss of $77 per week at the minimum. Since he is 36 years of age (R. 34) he has a life expectancy of well over 30 years. Hence, his financial loss, based on such expectancy, would be more than $120,000 ($77 per week average loss, or $4004 per year, times 30 equals $120,120).

There is nothing speculative about this. Damages are computed and awarded every day in actions based upon life expectancy and present income. In the instant case, the exact amount of respondent's ascertainable damage need not be shown with mathematical certainty in the pleadings. It is sufficient merely to show that the amount in controversy exceeds $3,000.

Moreover, respondent is a beneficiary of a life insurance policy of Anheuser-Busch, Inc., in the sum of $3,500, which would be terminated if he loses his job (R. 25-26). He is also the beneficiary of medical payments for himself and his family, sick benefits of $30 per week and eight paid

holidays each year (R. 25-26). He is also entitled to strike benefits of $40 per week (R. 31). Very clearly, the amount in controversy in the instant case is in excess of $3,000.

Furthermore, respondent might lose his job at Anheuser-Busch for any one of a number of reasons; the company might go out of business; respondent might move his residence; or he might be eligible for better employment in some other plant in which petitioners have a union shop.

The only way plaintiff can be protected in his occupation and trade is by preserving his union membership.

The District Court here is a local court of general jurisdiction, having broad equitable powers. Respondent invoked this jurisdiction as such (R. 12, 23). Indeed, respondent was compelled by the District Court to elect as to whether he wished to proceed under the local or general statutes (R. 12); and chose the local statute (R. 23). A presumption of jurisdiction attaches to a court of general jurisdiction, such as the District Court, where it sits as a local court; but even if it does not, it must appear to a legal certainty that the jurisdictional amount is not involved to justify a dismissal.

Petitioners rely heavily on *Giordano v. Radio Corp. of America*, 183 F. (2) 558 (C. A. 3, 1950), as being in conflict with the instant decision. A short answer is that the statute involved in the *Giordano* case is not the same which was construed by the Court of Appeals here. The *Giordano* decision is not concerned with the District of Columbia Code. Moreover, a careful reading of the *Giordano* opinion shows that it does not support petitioners' position; but, on the contrary, holds that a financial loss which an expelled union member is "likely" to suffer would satisfy the requirements that there must be $3,000 in controversy, even in civil suits in the United States District Courts under the general statute.

In *Giordano* there was no claim that plaintiff's livelihood would be affected, or his earning power impaired in any way, as in the istant case. All Giordano claimed was loss of his top seniority, which affected his job and earning capacity not at all. The court naturally found that the controversy did not involve $3,000—a necessity of jurisdiction there, but not in the instant case. Note, however, what the court says:

> "* * * the evidence fails wholly to establish the fact that the plaintiff is *likely* to suffer pecuniary loss in the sum of $3,000." (Emphasis supplied.)

On the evidence in the *Giordano* case, the plaintiff was not "likely" to suffer any loss. Had he been, it would seem plain from the above language that the court would have held that $3,000 was in controversy. In the instant case, respondent is not only "likely" to suffer heavy financial loss, he is certain to. His present job, with its many benefits and high wages, requires membership in petitioner Union as a condition of employment. His tenure therein could hardly be more insecure, as we have pointed out. Respondent's right to work at his trade is eliminated by petitioners' expulsion. These are realities which respondent must face *now*.

Furthermore, before petitioners' motion to dismiss could be sustained, it must appear to a legal certainty that the claim is for less than the jurisdictional amount. In *Jones v. Drewry's, Limited*, 149 F. (2) 251, (C. A. 7, 1945), the court said:

> "Before the motion could be granted, the court must be convinced on the record to a legal certainty that the claim is for less than the jurisdictional amount. St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U. S. 283, 289, 58 S. Ct. 586, 82 L. Ed. 845."

See also *Montgomery Ward & Co. v. Langer*, 168 F. (2) 182, 185, 186 (C. A. 8, 1948).

Clearly, it could not be said as a "legal certainty" that the loss of respondent's employment and livelihood, insurance, strike benefits, etc., does not create a potential damage greatly in excess of $3,000. Respondent does not have to wait until he and his family are starving to make the amount involved herein more than $3,000. It is sufficient if the threatened loss to respondent is in excess of that amount; and the Court of Appeals properly so held.

CONCLUSION.

The petition for writ of certiorari should be denied because:

1. This is local action under the District of Columbia Code without even the possibility of conflict with decisions of other circuits.

2. Respondent's damages are substantial. If the illegal expulsion order stands, he will lose his job, be unable to work, in his highly skilled trade anywhere in the United States, and lose many other valuable benefits, all of which the Court of Appeals found, and all of which is supported by the uncontradicted evidence.

3. The National Labor Relations Act is not self enforcing and offers respondent no protection.

4. Without his union membership respondent has no job protection.

5. The charge of Communist, which petitioners have illegally bestowed on respondent, will, unless removed now, deprive respondent of his right to make a living at his trade.

6. It would be naive to assume that petitioners would protect respondent in his job, especially since they have publicly declared that they would not; or to assume that respondent could go on working except for the pendency of this litigation.

Respectfully submitted,

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